

Remarks

The Office Action and the references cited therein have been carefully considered and the above amendment is presented in an effort to advance prosecution of the Application. Claims 1-5 and 11-21 are pending in the present patent application. Claim 6-10 were previously canceled. Claims 1-5 and 11-21 were rejected by the Examiner in the office action dated February 6, 2006 ("the Office Action") Applicants have amended independent claims 5 and 15 herein for reasons of clarity and not substance.

In paragraph 2 of the Office Action the Examiner rejected claims 1-4 under 35 U.S.C. §103(a), as being unpatentable over US Patent 2,732,941 to Deiss (hereinafter "Deiss") in view of US Patent 3,722,802 to Kreienbaum (hereinafter "Kreienbaum"). The Applicants respectfully traverse this rejection of the claims. The Examiner has failed to make a prima facie obviousness rejection by failing to identify any reference that teaches a spreader that is flexible and resilient" so that it can "flap back and forth due to movement of the shoe" as recited in claim 1.

The Examiner stated that "the panels (41) [of Deiss] have an inherent flexibility and resilience due to the nature of the material from which they are constructed, as per claim 1". The Applicants respectfully traverse this. "Inherency" as used in patent law refers to a condition that arises of necessity from the patent disclosure. Nowhere in the Deiss disclosure do the words "flexible" or "resilient" appear. Nor does Deiss describe the behavior of his panels as "flapping back and forth due to motion of the shoe" as recited in claim 1. Nor does Kreienbaum describe "flapping back and forth due to movement of the shoe."

See the previous Amendment for an explanation of the rigidity of Kreienbaum and Deiss.

For at least the above reasons the Applicants respectfully request that the Examiner withdraw his rejection of claim 1 and claims 2-4 as dependent thereon as unpatentable under 35 USC 103(8).

In paragraph 4, the Examiner rejected Claims 5, 11, 12 ,15-18, 20 and 21

under 35 USC 103(a) as being unpatentable over Deiss in view of US Patent 4,875,889 to Hagerer (hereinafter "Hagerer"), and Kreienbaum. The Applicants respectfully traverse the Examiner's rejection of the claims for failing to make a *prima facie* case of obviousness under 35 USC 103.

First, none of Deiss, Kreienbaum and Hagerer suggest or disclose a spreader that "flaps back and forth due to movement of the shoe" as . Regarding Deiss and Kreienbaum, this is explained above in the discussion regarding claim 1. These arguments are equally applicable to independent claims 5 Deiss 15, which also recite spreaders comprising "flexible and resilient panels [] that resiliently flap back and forth due to movement of the frame" .

Hagerer discloses guide vanes that are moved back and forth under the control of a linear output electric motor. See Hagerer, col. 5, lines 1-25. Nowhere does Hagerer mention flapping, flexing, bending, resiliency, or flexibility of his guide vanes. The electric motor of Hagerer determines the proper position of the guide vanes and drives them to that position.

For at least the above reasons the Applicants respectfully request that the Examiner withdraw his rejection of claims 5 and 15, and of claims 11-12, 16-18 and 20-21 as unpatentable under 35 USC 103(a).

In paragraph 6 of the Office Action the examiner rejected claims 13, 14 and 19 under 35 USC 103(a) as being unpatentable over Deiss, Hagerer and Kreienbaum as applied to claims 5 and 11 above, and further in view of Balthes 3,731,475.

The grounds for the rejection were that "Deiss and Hagerer and Kreienbaum failed to disclose wherein the panels are rubber. Balthes discloses a similar device wherein the panels (44) are made of rubber."

The applicants respectfully traverse the Examiner's rejection of claims 13, 14 and 19 for failure to make a *prima facie* case of obviousness under 35 USC 103.

Balthes is directed to an agricultural leaf picking machine having priming

heads 16 with an upper surface or table 42 in which a set of flexible finger-like paddles 44 is adapted to sweep backwardly across the table to direct the stalks of a single row of tobacco plants into the picking machine. Paddles 44 are mounted on a recirculating chain 48 which are wrapped around two pinions 54.

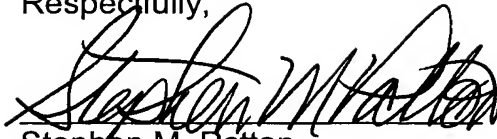
In contrast to this, the invention of claim 13 is directed to a cleaning shoe for an agricultural harvesting machine that includes a movable frame with sidewalls, sieve supported on the frame and defining a longitudinal flow path for grain, with spreaders comprising flexible panels mounted on the sidewalls and resiliently flapping back and forth due to movement of the frame.

The device as described in Balthes and in claim 5 (from which claim 13 depends) do not come from the art of grain cleaning. Furthermore, they do not disclose the elements of claims 13, 14 and 19. Even further, there is no teaching to combine the tobacco plant stalk gathering apparatus of Balthes with the grain cleaning shoe of the present invention.

The Balthes machine and the invention of claims 13, 14 and 19 are for different crops. They are from different portions of their respective machines. They serve different functions in their different machines. The fact that Balthes uses a flexible finger extending from a gathering chain that moves in a single direction to engage the stalks of tobacco plants does not teach "a flexible and resilient rubber belting material" as recited in claim 13 and 19 that flaps back and forth due to movement of the cleaning frame, nor does it teach panels extending downstream in a cleaning shoe at an "acute angle [] between 30 and 60°" as recited in claim 14. Indeed, the Balthes paddles 44 are illustrated as extending at an angle of about 90° from the chains to which they are mounted.

For at least the above reasons, the Applicants asked that the Examiner withdraw his rejection of claim 13, and of claim 14 dependent thereon, and of claim 19, as unpatentable under 35 USC 103(a).

Respectfully,

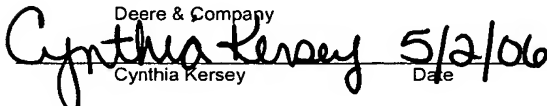

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